IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.567 OF 2004

1. Smt.Maria Emilia Barreto
Mascarenhas,
Aged 62 years, residing at H.No.40,
Amona, Mamil House,
Quepem, Goa.

2. Shri Bernardo Jose Mascarenhas,
Aged 35 years, residing at H.No.40,
Amona, Mamil House,
Quepem, Goa.

3. Smt.Frieda Mascarenhas,
aged 26 years, residing at H.No.40,
Amona, Mamil House,
Quepem, Goa.

4. Smt.Ascilia Mascarenhas Barreto,
Aged 39 years, residing at H.No.40,
Amona, Quepem,Goa.

5. Shri Carmo Cruz Barreto,
aged 43 years, residing at H.No.40,
Amona, Quepem, Goa. .. Petitioners
(Org.Plaintiffs)

Vs.

1. Smt.Sushma Ruzar Fernandes,
major of age, housewife,
residing at H.No.162, Pandamol,
Deulmol, Quepem, Goa.

2. Shri Ruzar Fernandes,
major of age, driver,
residing at H.No.162,
Padamol, Deulmol, Quepem, Goa.

3. Mrs.Natalina Fernandes,
resident of H.No.145, Borimol,
Sirvoi, Quepem, Goa. .. Respondents
(Org.Defendants)

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Shri M.S.Usgaonkar, Sr.Advocate with Shri Iftekar Agha, Advocate for the petitioners.

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CORAM : R.M.S.KHANDEPARKAR, J
DATED : 13TH JANUARY, 2006.

ORAL JUDGMENT : (Per R.M.S.KHANDEPARKAR, J)

1. Heard Shri Usgaonkar, learned Senior Counsel for the petitioners. None present for the respondents. Perused the records.

2. In fact, when initial notice was issued to the respondents, they were duly served in the matter but none had appeared even at the time when the matter was fixed for hearing at the admission of the petition. Thereafter, the notices were issued specifically directing that the matter would be heard finally at the admission stage itself and they were duly served, yet none has appeared on behalf of the respondents. It appears that the respondents are not interested in contesting the proceedings.

3. The grievance of the petitioners is against the order dated 19th September, 2004 passed by the learned Civil Judge, Senior Division, Quepem, in Regular Civil Suit No.67/2003/A. It is the

contention of the petitioners that the trial court not only exceeded its jurisdiction while ordering impleadment of the respondent No.3 as party defendant to the suit but allowed the impleadment on wrong assumption that she had a mundkarial right to the suit house without ascertaining whether she has any declaration in her favour in that regard from the competent authority under the Goa Mundkars (Protection from Eviction) Act, 1975 and without arriving at any finding as regards the absolute necessity of presence of the respondent No.3 for final disposal of the dispute between the petitioners and the remaining respondents in the said suit.

4. The records apparently disclose that the respondent No.3 had approached the trial Court with an application seeking intervention in the Regular Civil Suit No.67/2003/A as an intervener. The claim of the respondent No.3 is that she has been residing in the suit house over 40 years as the Mundkar and the respondent Nos.1 and 2 are her daughter-in-law and Son, respectively. At the same time, the records also disclose that the efforts on the part of the respondent Nos.1 and 2 to seek declaration of being a Mundkar in relation to the suit house did not yield fruitful result, and on the contrary, their claim in that regard was rejected by the Mamlatdar, who is the competent authority under the said Act to decide such

issue. Pursuant to such failure on the part of the respondent Nos.1 and 2 to seek such declaration, the petitioners filed the said suit for their eviction from the suit house. It was only after filing of the said suit that the respondent No.3 approached the trial Court with a plea of being mother of the respondent No.2 and in that capacity being a Mundkar in relation to the suit house. Neither the application filed by the respondent No.3 nor any other material on record reveals that she had been able to secure any such declaration under the said Act regarding her alleged right as Mundkar in relation to the suit house. Even the impugned order nowhere reveals any such declaration in favour of the respondent No.3 in respect of the suit house. Indeed, neither the said application nor any other material nor the impugned order discloses any fact which could prima facie disclose any sort of interest or right in favour of the respondent No.3 in the suit house so as to justify her intervention in the suit. Besides, the records disclose that the suit has been filed for eviction of the respondent Nos.1 and 2. Neither any cause of action is pleaded nor any relief is asked for against the respondent No.3 in the plaint. Apparently, neither the pleadings in the plaint nor any other materials reveal any justification for intervention of the respondent No.3 in the said suit. In the facts and circumstances of the case and bearing in mind the settled principle of law that the plaintiff is a master of the suit, the trial Court

has clearly acted in excess of jurisdiction in directing impleadment of the respondent No.3 as the party defendant to the suit and that too when the respondent No.3 herself had not approached the Court for impleadment as the party defendant but had merely requested for impleadment as an intervenor. There is certainly a difference between a person being joined as a party defendant and a mere intervener. Once a person is joined as party defendant to the suit, he would be entitled to file his pleadings and contest the proceedings according to the defence sought to be raised by such person. However, in case of intervenor, he is not entitled to file any pleadings nor to lead any evidence as such. He can appear in the matter merely to assist the Court to arrive at the truth on the basis of whatever materials are placed on record by the parties to the proceedings.

5. Though the power of the Court to join any person necessary for final adjudication to dispute and for effective implementation of the order or decree to be passed, is available under Order I Rule 10 of the Code of Civil Procedure, the same has to be exercised judiciously and depending upon the facts and circumstances of each case. Merely because a person approaches the Court with some unsustainable and uncorroborated claim, such a person cannot be allowed to join as party to the suit. If a person wants to be joined

as party to the suit, he has to make out a prima facie case about the necessity of his presence for final adjudication of the dispute between the parties to the proceedings and for effective disposal of the case before the Court. In fact, the test for determination for the question relating to the necessity of joining a person or the party to a proceedings is well settled. Unless there is a right to some relief against such person in respect of the matter involved in the proceedings in question on account of independent right in favour of such person but not through the persons already on record, and it would not be possible to pass effective decree in the absence of such person as the party to the proceedings, it is not open for such person to make any inroads in the proceedings. The records in the case in hand nowhere disclose any such attempt on the part of the respondent No.3 so as to justify the impugned order passed by the trial Court. The impugned order nowhere discloses application of mind by the trial Court to this aspect of the matter. Merely because the respondent No.3 claims to be mother of the respondent No.2 and her name appears to have been included in the ration card, that by itself cannot be a justification for joining the respondent No.3 as the party defendant to the suit.

6. For the reasons stated above, the petitioners are justified

in contending about the illegality committed by the trial Court in allowing the application of the respondent No.3 and further joining her as the party defendant to the suit, and therefore, the impugned order cannot be sustained and is required to be quashed and set aside.

7. The petition is allowed. The impugned order is hereby quashed and set aside. The application filed by the respondent No.3 in the trial Court is dismissed. The suit to proceed without the respondent No.3, either as party defendant or as an intervenor. There shall no order as to costs.

R.M.S. KHANDEPARKAR, J